

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALEX MARTOS,)	
)	Plaintiff
vs.)	Civil Action No. 06-1544
)	Judge Terrence F. McVerry/
WASHINGTON COUNTY;)	Magistrate Judge Amy Reynolds Hay
WASHINGTON COUNTY)	
CORRECTIONAL FACILITY; WARDEN)	
JOSEPH PELZER, individually and in his)	
capacity as Warden of the Washington)	
County Correctional Facility; CAPTAIN)	
KING, individually and in his capacity as)	
Corrections Officer with the Washington)	
County Correctional Facility; OFFICER)	
DZIAK, individually and in his capacity as)	
a Corrections Officer with the Washington)	
County Correctional Facility;)	
WASHINGTON COUNTY OFFICE OF)	
THE DISTRICT ATTORNEY; and)	
JOHN C. PETTIT, individually and in his)	
capacity as the District Attorney of)	
Washington County,)	
)	Defendants

MEMORANDUM ORDER

On November 16, 2006, this case was referred to United States Magistrate Judge Amy Reynolds Hay for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On April 28, 2009, the Magistrate Judge issued a Report and Recommendation (Doc.56) recommending that the Motion for Summary Judgment filed by Washington County Office of the District Attorney, John C. Pettit, (Doc. 40), and the Motion for Summary Judgment filed by Captain King, Officer Dziak, Warden Pelzer, Washington County, and the Washington County Correctional Facility (Doc. 46) be granted, given Martos's failure to exhaust administrative

remedies with respect to his federal claims. The Magistrate Judge also recommended that the Court decline to exercise supplemental jurisdiction over Martos's state law assault and battery claim.

Service of the Report and Recommendation was made on all parties. Martos filed Objections on May 15, 2009 (Doc. 57), alleging and offering Affidavits - two from unrelated litigation - purporting to show that compliance with the grievance process was futile. There is, however, no "futility" exception to the administrative exhaustion requirement. Ahmed v. Dragovich, 297 F.3d 201, 206 (3d Cir. 2002). The Defendants, Office of the Washington County District Attorney, John C. Pettit, filed a Response to the Objections on May 22, 2009 (Doc. 58), reiterating the Plaintiff's failure to exhaust, and noting that, in any event, Martos failed to make any connection between his claims and personal involvement on the part of Pettit or the District Attorney's Office. The Court has reviewed the Objections and the Response thereto, and finds no reason to modify or reject the Magistrate Judge's Report and Recommendation.

AND NOW, this 1st day of June, 2009, IT IS HEREBY ORDERED that the Defendants' Motions to Dismiss (Docs. 40 and 46) be GRANTED with respect to the federal claims, and IT IS ALSO ORDERED that the state law assault and battery claim be DISMISSED.

The Report and Recommendation of Magistrate Judge Amy Reynolds Hay dated April 28, 2009 (Doc. 56) is hereby adopted as the opinion of the Court.

s/ Terrence F. McVerry
United States District Judge

cc: Amy Reynolds Hay
Counsel of Record via CM-ECF